

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

January 22, 2003 Session

**CHESLEY RANDELL THOMPSON v. STATE OF TENNESSEE**

**Appeal from the Circuit Court for Blount County**  
**No. C-13168     D. Kelly Thomas, Jr., Judge**

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**No. E2002-00580-CCA-R3-PC**  
**June 3, 2003**

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The petitioner, Chesley Randell Thompson, appeals the trial court's denial of his petition for post-conviction relief, claiming that he received the ineffective assistance of counsel before and during trial. We hold that this case is not properly before us because the petitioner failed to file his petition for post-conviction relief within the one-year statute of limitations provided in Tenn. Code Ann. § 40-30-202(a). Thus, we dismiss the appeal because of the lack of jurisdiction.

**Tenn. R. App. P. 3 Appeal as of Right; Appeal Dismissed**

JOSEPH M. TIPTON, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR. and NORMA MCGEE OGLE, JJ., joined.

R. Mack Garner, District Public Defender, for the appellant, Chesley Randell Thompson.

Paul G. Summers, Attorney General and Reporter; Elizabeth B. Marney, Assistant Attorney General; Michael L. Flynn, District Attorney General; and Edward P. Bailey, Jr. and Kirk Andrews, Assistant District Attorneys General, for the appellee, State of Tennessee.

**OPINION**

In 1998, the petitioner was convicted of child rape and sentenced to twenty-three years. On March 24, 1999, this court affirmed the conviction but remanded the case for resentencing. See State v. Chesley Randell Thompson, No. 03C01-9807-CC-00238, Blount County (Tenn. Crim. App. Mar. 24, 1999), app. denied (Tenn. Sept. 13, 1999). The Tennessee Supreme Court denied the petitioner's application for permission to appeal on September 13, 1999. Subsequently, the petitioner filed a petition for a writ of certiorari to the United States Supreme Court, which was denied on February 22, 2000. See Thompson v. Tennessee, 528 U.S. 1157, 120 S. Ct. 1164 (2000). On March 6, 2001, the petitioner filed his pro se petition for post-conviction relief, claiming that he received the ineffective assistance of counsel before and during trial. The trial court appointed counsel to amend

the petition. After an evidentiary hearing, the trial court determined that the petitioner received the effective assistance of counsel and denied the petition for post-conviction relief.

The state claims for the first time on appeal that this court does not have jurisdiction over this case because the petitioner filed his post-conviction petition outside the one-year statute of limitations provided in Tenn. Code Ann. § 40-30-202(a). The state contends that the one-year period for filing the petition began to run on September 13, 1999, when the Tennessee Supreme Court denied permission to appeal. In addition, it argues that the one-year period was not tolled by the petitioner's filing a petition for writ of certiorari to the United States Supreme Court. The petitioner does not respond to the state's claim.

Tenn. Code Ann. § 40-30-202(a) is the controlling authority with regard to the statute of limitations for post-conviction petitions. It provides that

a person in custody under a sentence of a court of this state must petition for post-conviction relief under this part within one (1) year of the date of the final action of the highest state appellate court to which an appeal is taken or, if no appeal is taken, within one (1) year of the date on which the judgment became final, or consideration of such petition shall be barred. The statute of limitations shall not be tolled for any reason, including any tolling or saving provision otherwise available at law or equity. Time is of the essence . . . .

The “one-year statutory period is an element of the right to file a post-conviction petition and . . . is not an affirmative defense that must be asserted by the State.” State v. Nix, 40 S.W.3d 459, 464 (Tenn. 2001). If a petitioner files a petition for post-conviction relief outside the one-year statute of limitations, a court may still consider it if (1) a new constitutional right has been recognized; (2) the petitioner's innocence has been established by new scientific evidence; or (3) a previous conviction that enhanced the petitioner's sentence has been held to be invalid. Tenn. Code Ann. § 40-30-202(b)(1)-(3). A court may also consider an untimely petition for post-conviction relief if applying the statute of limitations would deny the petitioner due process. Burford v. State, 845 S.W.2d 204, 208 (Tenn. 1992); see, e.g., Seals v. State, 23 S.W.3d 272 (Tenn. 2000) (holding that due process mandates the tolling of the statute of limitations under the 1995 Sentencing Act during periods of a petitioner's mental incompetence).

Tenn. Code Ann. § 40-30-202(a) specifically states that the one-year statute of limitations begins to run from “the date of the final action of the highest state appellate court to which an appeal is taken.” Moreover, this court has held that “due process does not require tolling the statute of limitations while a petition for certiorari is pending before the United States Supreme Court.” John Haws Burrell v. State, No. E1999-02762-CCA-R3-PC, Anderson County, slip op. at 3 (Tenn. Crim. App. Jan. 8, 2001), app. denied (Tenn. May 21, 2001). Thus, the statute of limitations in the present case began to run on September 13, 1999, when the Tennessee Supreme Court denied the petitioner's application for permission to appeal. Because the petitioner filed his petition for post-conviction

relief nearly eighteen months later, it was barred by the statute of limitations. Additionally, nothing in the record indicates that the petitioner's claim would satisfy any of the three exceptions to the post-conviction statute of limitations set forth in Tenn. Code Ann. § 40-30-202(b).

Nevertheless, due process may prohibit strict application of the statute of limitations in a post-conviction case “when the grounds for relief, whether legal or factual, arise after . . . the point at which the limitations period would normally have begun to run.” Sample v. State, 82 S.W.3d 267, 272 (Tenn. 2002) (quoting Sands v. State, 903 S.W.2d 297, 301 (Tenn. 1995)). Furthermore, circumstances beyond a petitioner's control may justify tolling the statute of limitations. For example, in Williams v. State, 44 S.W.3d 464, 471 (Tenn. 2001), our supreme court recognized that the petitioner filed his petition for post-conviction relief after the statute of limitations had expired but affirmed this court's remanding the case for an evidentiary hearing in order for the trial court to address the petitioner's allegation that his attorney's misrepresentation caused his petition to be late-filed, “thereby requiring the tolling of the limitations period.”

Regarding the timeliness of the petition for post-conviction relief in this case, the petitioner's pro se petition states the following:

The Petition for Writ of Certiorari was filed in December, 1999, and on the 1st day of March 2000, said petition was denied by the United States Supreme Court. Therefore, petition is properly before this Honorable Court for any and all relief that may or should be granted in this cause.

We note that the United States Supreme Court denied the petition for writ of certiorari on February 22, 2000, not March 1. The petitioner signed his pro se petition for post-conviction relief on February 28, 2001, and filed the petition on March 6, 2001. Thus, even if his petition for writ of certiorari had tolled the statute of limitations, the petition for post-conviction relief still would have been filed outside the one-year time period.

The petitioner has offered no explanation as to why his petition was filed late. Therefore, unlike Williams, the petitioner has failed to make any allegation, such as attorney misrepresentation, that would justify the petition being filed beyond the one-year statute of limitations, and an evidentiary hearing is unwarranted. Moreover, the petitioner's claim that he received the ineffective assistance of trial counsel arose before the statute of limitations began to run. Thus, he had a reasonable opportunity to raise the issue before the statute of limitations period expired. See Burford, 845 S.W.2d at 208 (providing that “before a state may terminate a claim for failure to comply with procedural requirements such as statutes of limitations, due process requires that potential litigants be provided an opportunity for the presentation of claims at a meaningful time and in a meaningful manner”).

Based upon the foregoing and the record as a whole, we dismiss the appeal.

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JOSEPH M. TIPTON, JUDGE